

**COMMISSION MEETING
THURSDAY, SEPTEMBER 14, 2006
DRAFT MINUTES**

Chair Ellis called the meeting to order at 1:30 p.m., at the Red Lion Hotel in Spokane. He introduced the following members and staff:

MEMBERS PRESENT: **COMMISSIONER JOHN ELLIS, Chair**, Seattle
 COMMISSIONER JANICE NIEMI, Vice Chair, Seattle
 COMMISSIONER ALAN PARKER, Olympia
 COMMISSIONER KEVEN ROJECKI, Tacoma
 SENATOR JEROME DELVIN, Richland
 REPRESENTATIVE ALEX WOOD, Spokane
 REPRESENTATIVE JOHN SERBEN, Spokane

STAFF PRESENT: **RICK DAY**, Director
 SHARON REESE, Deputy Director
 JEANNETTE SUGAI, Acting Ast. Director–Field Operations
 DAVE TRUJILLO, Assistant Director – Licensing Operations
 AMY HUNTER, Administrator – Communications & Legal
 JERRY ACKERMAN, Assistant Attorney General
 SHIRLEY CORBETT, Executive Assistant

1. Review of Agenda and Director’s Report:

Director Day reviewed the agenda for Thursday and Friday and highlighted inserts added to the agenda packet since publication.

Adjusted Cash Flow:

Director Day noted the table included in the agenda packet offers a status report reflecting the compliance with the adjusted cash flow requirements for charitable and non-profit groups. The report depicts the first half-year figures with actual data, while the second half-year figures were populated with projected data based on 2005 gross receipts. He noted that seven charitable non-profit Bingo operations have closed in 2006; however, some of the closures were due to other compliance issues. The report highlighted licensees that might be facing revocation actions because they are not presently projected to meet their adjusted cash flow standard. Director Day reported the charitable non-profit groups intend to submit a petition next month to ask for temporary relief. He affirmed there has been quite a bit of discussion regarding the downward trends in the gross income for charitable non-profit

groups; however, since the smoking ban it has become much more dramatic. Staff will continue to monitor this issue. **Director Day** advised that typically the first quarter of each year is one of the biggest quarters; the question will be whether or not the non-profits will be able to recover sufficiently throughout the rest of this year

Chair Ellis reiterated the purpose of the required cash flow for the charitable non-profit organizations is to assure that a certain percentage of their revenue is being devoted to their non-profit purposes. **Director Day** affirmed and recalled the Commissioners had worked through a consultant's report and directed staff to bring back four proposals for rule changes if necessary relative to policy, audit requirements, and regarding combining some of the existing processes (the qualification/review program), and adjusted cash flow standards. **Director Day** advised that staff anticipates delaying that package until February, pending the Commission's consideration of the petition submitted by the non-profit group.

Agency Request Legislation:

Amy Hunter, Legislative Liaison reported that at the August meeting, staff presented three ideas for agency request legislation and asked the Commission to approve two of the packages. She reported that staff made a slight modification to the second package relating to penalties against minors who gamble. Staff advised last month that they would be pulling language from the Liquor Control Board Statute dealing with the controlled purchase program—which allows a licensee to run “spot checks” on whether people under the age of 18 were being admitted in their premises and allowed to gamble. The licensee would contact the Gambling Commission, identify their plan and if appropriate agency staff would provide approval. Ms. Hunter noted that one of the provisions in the Liquor Control Board statute was that an employee could not be fired for the first time failure of admitting someone under the age of 21 and allowing them to drink. Commission staff believed there may be times when an employee should be terminated for willfully admitting underage patrons and allowing them to gamble or consume alcohol. Staff checked with the Liquor Control Board and found that they have licensees who don't participate in the program because of that provision. Staff planed to forward the legislation without the provision language if approved. Therefore, if a licensee felt that someone should be terminated, they would have that ability. Staff suggested this be a Class II civil infraction for the minor with a \$125.00 fine and up to four hours of community supervision plus any costs the court might impose. Ms. Hunter referenced a table that compared the penalties for the purchase of tobacco and alcohol by underage patrons in Nevada and New Jersey. In both states, the penalties were misdemeanors. New Jersey has a \$500 to \$1,000 fine and a six-month suspension of the minor's driver's license. She affirmed the proposed legislation was approved last month; however, staff wanted to update the Commission on the minor changes. The commissioners concurred.

Ms. Hunter reported the third proposal dealt with barring criminals. She commented that staff spent the last month making refinements to the proposal and narrowing the list of activities that could get a person barred. Staff focused on four categories that can get a person on the barred list. The first would be career or professional offenders such as organized crime figures. The second category includes people who have been convicted of a criminal violation of a gambling law in Washington or any other state. The third category

includes people who have been convicted of a felony involving or in connection with a gambling activity. The last category includes people who have been excluded in another state that has an exclusion list. **Ms. Hunter** affirmed the Commission would be passing specific rules regarding the barring lists from other states—for instance, if a state hasn't updated their barring list for five years, the Commission may not want to take everyone on that barring list and automatically put it on Washington's barring list.

Ms. Hunter stated that staff made changes to Subsection 7 noting that service can be made by personal service or certified mail to the last known address. If the Commission cannot reach the person in either of those ways, a public notice would be placed in a newspaper in Thurston County, and the person's name would be published on the Commission's web site. There were also changes made in Subsection 11 allowing for the Commission's consideration for the removal of a person's name from the list—if a person can prove their worthiness by clear and convincing evidence.

The Washington Association of Sheriff's and Police Chief's voted unanimously to support both legislative proposals and staff also received a very strong indication the Washington Association of Prosecuting Attorneys would be supporting them as well; however, they have not taken that formal vote yet. **Ms. Hunter** thanked the Recreational Gaming Association and the Restaurant Association for taking the time to comment on the proposals.

Representative Wood expressed concern on how the barring list would be enforced—he questioned how long the first list is predicted to be, and he asked who the career professional offenders were and who would be making that determination. **Ms. Hunter** explained the Commission would be required to pass rules to further define the issues raised.

Representative Serben commented that the most famous list is the Las Vegas Black Book, and he questioned whether everyone on that list would be automatically shifted to Washington's list. **Ms. Hunter** responded in the negative and explained the Commission would be taking a look at that list because it is quite lengthy. Staff believes it is important for the Commission to have their own rules—staff expects the list will be limited because the desire is for the list to be reasonable. **Director Day** advised that staff's research has found that this type of law in the other states has been upheld very effectively. He explained the thing that pushed staff to move forward with the legislation was that some of the undercover officers were running into the same people they previously convicted in the same locations, and they suggested that if the Commission could bar the people, it would provide a mechanism to get those people out of the places rather than going through a long complex undercover investigation.

Chair Ellis called for further questions and public comments. There were none.

Commissioner Niemi made a motion seconded by **Commissioner Parker** to approve the agency request legislation relating to barring criminals from gambling facilities as recommended by staff. *Vote taken; the motion passed with five aye votes.*

Correspondence

Director Day reminded the Commission that the NIGC has been going through a rule making process for some time relative to Class II machines and Class II gambling devices. The Governor's Office received a letter requesting a response to those standards. The correspondence in the agenda package conveys that the State of Washington recognizes the jurisdiction of the NIGC and the Tribes relative to Class II gambling. The Commission's jurisdiction relates to Class III gambling; however, the Commission wanted to make sure the Class II devices don't end up as a guise for a Class III device. The correspondence pointed out some areas in their proposed rules emphasizing the Commission's hope that they pay close attention to them as they proceeded with their rule making. Director Day explained that Class II devices are those that the Indian Gaming Regulatory Act (IGRA) approved—it is a phrase that refers to electronic aids for Bingo. There has been a whole series of devices that have been developed around that phrase and they have become quite extensive. In some cases a lay person may not be able to tell the difference between a Class II device and a device that is governed in a Class III compact.

Director Day advised the NIGC has not really had written standards before and they have undertaken this process in order to get some standards / rules under their jurisdiction. The Commission received a follow up call from Penny Coleman and an invitation to present testimony in Washington DC at the NIGC hearing. Deputy Director Sharon Reese, Assistant Director Julie Lies, and Manager Dallas Burnett agreed to present testimony to convey the information reflected in the written statement supplied in the agenda packet. Director Day inquired whether the Commission desired any modifications or enhancements, and he noted the Commission will have an opportunity through the end of September to file a written response and other information. He anticipated the Commission would take the opportunity to file written comments following the Deputy Director's testimony and her report back to the Commission regarding the progress and future approach regarding this issue.

Commissioner Parker asked staff to provide a physical machine for Commission viewing, or at least detailed photos of the devices and a description of the characteristics of the machines that are being proposed or might already be in use in other states. **Deputy Director Reese** and **Director Day** affirmed a video clip of the machines or the game in play could be provided as a part of the update at the October meeting. Director Day affirmed the machines are illegal off Indian Country in the state. Commissioner Parker inquired if there were tribes already using some version of the machines and Director Day affirmed, and he estimated approximately a thousand machines were already in play. Commissioner Parker asked if any of those would be barred by the proposed changes. Director Day believed that if the NIGC accepted the strict language of what the Commission has addressed and is trying to keep while removing the images of cherries, bells, and those kinds of things—it would have an impact. He noted the NIGC has had lengthy discussion on this matter. Part of their proposal at one time would have required that at least half of their screen had to be bingo. There have been different combinations proposed and there have been proposals for grandfathered provisions to phase out some of the machines. Director Day advised there were going to be several other tribes and states present to provide testimony. He affirmed that in some of the states (Oklahoma), this is the form of machine gambling that is available

for the state. Director Day noted it's a completely different jurisdictional area. With no other comments, **Chair Ellis** called for public comments.

Frank Miller Attorney for Multi Media Games, advised that Multi Media is a licensee licensed by many tribes and certified by the Gambling Commission. They supply Class III games and they are the founding father of Class II technology. Mr. Miller agreed that in jurisdictions where there aren't tribal compacts, many tribes have relied on Class II to survive. Over the years the technology has evolved, the machines are fast and they look just like some Class III games. However, the bottom line is they have to be a bingo game, and essentially they are electronic bingo games. They have to be linked to other players, there has to be a bingo card, and there has to be a ball drawn—the graphics, the bells, the cherries, and the whistles have nothing to do with the outcome, they are for entertainment purposes only and the courts have upheld that opinion. Over the years, the NIGC has looked to put standards in place. Mr. Miller affirmed there have been numerous debates about the standards that should be employed. He noted the proposed rules are quite restrictive. He suggested they take the clock backwards and will have a devastating impact on Class II. Mr. Miller emphasized that would be a shame because some of the tribes rely on Class II as a viable form of electronic bingo gaming. He said if it isn't bingo, and that is what the NIGC is looking at, then it is Class III, and should be a game under the Commission's compacts. Mr. Miller reported that Multi Media as a manufacturer has submitted their games to the NIGC and they have been approved; however, there are some manufacturers that have games that have not been approved by the NIGC because there is no standard in place. They compete with manufacturers with approved games—and they actually could be viewed by some as Class III. Mr. Miller affirmed that a lot of tribes are concerned with the rules and the hope is that this wouldn't destroy Class II.

Commissioner Parker asked if Mr. Miller had a sense of what version the NIGC would be proceeding with, and **Mr. Miller** responded this was simply an area they wanted to clarify. Many people believe the courts have clarified this issue and if the court standard was imposed and enforced, there wouldn't be this big of a problem. Unfortunately, there are those in the NIGC and the Justice Department who disagree because they say it's hard to tell the difference between Class II and Class III. Mr. Miller commented that there is a standard and a process, and if they are tested there is a difference. If a Class III game is next to a Class II game, the Class III game will be more profitable because of the speed of play and other different things. The Class II games have been improved—they are pretty fast; but, they are still a bingo game tied to an electronic ball draw. Players still have to touch the screen and it daubs the cards. The attempt has been to make the game more interactive and that has caused some concern with some regulators especially in the NIGC and Justice Department. Mr. Miller reiterated his concern that they may pass rules that will unfortunately harm the tribes that rely on the Class II arena.

With no further comments **Director Day** continued with the Director's Report noting copies of the final approved 2007-00 biennium budget as submitted to the Office of Financial Management was provided to each commissioner. He also noted the Commission just received notice that ZDI has appealed the Commission's final decision to Superior Court.

Director Day addressed the Congressional Update, noting the Commission has been tracking and commenting on Senate Bill 2078. Director Day advised that he was invited by the Western Indian and Gaming Association to testify before an informal staff hearing regarding Bill 2078 and the Commission's position. Senate Bill 2078 is sponsored primarily by Senator McCain, and the Commission's primary concern relates to putting in Class III authority specifically for the National Indian Gaming Commission. Director Day advised his testimony reflected the information previously shared in letters to Senator Murray and Senator Cantwell—which has not been supportive of that concept in states that have compacts with tribes and that currently regulate the Class III gaming activities.

Commissioner Parker indicated there was supposed to be a vote in the House this week on the Pommel Bill. **Mr. Ackerman** advised that occurred on September 12; however, under the suspension of rules, it required a 2/3rds vote for the bill to go forward—it didn't achieve the necessary votes.

In closing, **Director Day** addressed a series of news articles in the agenda packet relating to Internet gambling and gambling activities across the nation. **Chair Ellis** called for public comments regarding the Director's Report.

Dolores Chiechi Executive Director of the Recreational Gaming Association stated the RGA appreciated staff sharing the agency request legislation and asking for the Association's input. She affirmed the RGA responded and they were thankful that some of their comments were taken into consideration and the proposed bills were amended to include the comments. Ms. Chiechi advised the RGA appreciated that process and is looking forward to working through the legislation in January.

2. New Licenses and Tribal Certifications:

Commissioner Parker made a motion seconded by **Commissioner Niemi** to approve the list of new licenses, changes, and tribal certifications as listed on pages 1-21. Vote taken; the motion passed with five aye votes.

3. Default:

Paula Elkins, Class III Employee-Revocation: *(Not present)*

Ms. Hunter reported that Paula Elkins is a Class III certified employee. She explained that individual tribal licensees are licensed by the tribe and then certified by the state. Ms. Elkins is not currently working; however, a Class III certification may be automatically transferable to a card room employee license. Therefore, staff prefers to bring these actions forward for a final order so they don't return to work in the card room venue. Staff is requesting that Ms. Elkins' certification be revoked based on her May conviction for one count of Assault III and one count of Assault III for domestic violence, which are Class C felonies. Ms. Elkins is currently on probation. The charges were sent by certified mail and regular mail. The certified mail came back as undeliverable, the regular mail did not. Staff tried to contact Ms. Elkins by telephone to remind her of the deadline to request a hearing and found the phone number had been disconnected. By failing to respond Ms. Elkins has waived her

right to a hearing and staff is requesting a default order be entered revoking her Class III certification.

Commissioner Niemi made a motion seconded by **Commissioner Rojecki** that the Commission revoke Paula Elkins' certification to conduct Class III gambling activities based upon the findings and conclusions substantially as staff presented. *Vote taken; the motion passed with four aye votes.*

4. Petitions for Reconsideration:

Sharkey's Sports Bar and Grill – Lynnwood:

Assistant Attorney General Bruce Marvin was present for the State. **Attorney Tamara Chin** was present representing **Petitioner Mark Wertz**. Ms. Chin and Mr. Marvin provided their testimony in the matter for reconsideration. A recording and a transcript of the hearing is available upon request.

At the conclusion of the testimony (3:30 p.m.), **Chair Ellis** called for an executive session to deliberate the matter; he recalled the public meeting at 3:30 p.m.

Commissioner Parker made a motion seconded by **Commissioner Niemi** to deny the petition for reconsideration by Sharkey's Sports Bar and Grill for the reason that the Commission was not persuaded by counsel for the petitioner that there were persuasive arguments presented on the record to overturn the findings and the conclusions of the Administrative Law Judge. In the absence of persuasive arguments to the Commission, Commissioner Parker suggested the Commission decided to affirm the findings and the conclusions of the ALJ in this matter. He noted the petitioner still has a right to appeal this decision to the Superior Court. **Chair Ellis** called for discussion; there was none. *Vote taken; the motion passed unanimously.*

Petition for Review:

Assistant Attorney General Bruce Marvin was present for the State, as well as **Petitioner Laurel Forcher**. Ms. Forcher and Mr. Marvin provided their testimony in the matter for reconsideration. A recording and a transcript of the hearing is available upon request.

At the conclusion of the testimony (3:45 p.m.), **Chair Ellis** called for an executive session to deliberate the matter; he recalled the public meeting at 4:10 p.m.

Commissioner Niemi made a motion seconded by **Commissioner Parker** to affirm the findings and conclusions of the Administrative Law Judge; and, that instead of staff's recommendation that Ms. Forcher's license be revoked, that her license be suspended for 30-days and that the suspension will be commenced when the order is signed and released. **Chair Ellis** called for discussion; there was none. *Vote taken; the motion passed unanimously.*

Chair Ellis emphasized that Ms. Forcher must understand how important it is that the Commission look very carefully when a person is convicted of a felony or a serious misdemeanor because the Commission is charged to ensure that the gambling industry is very clean. He noted that in Ms. Forcher's case, the Commission has granted consideration given the efforts Ms. Forcher has made to address her problems and given the fact that the problems were not directly related to gambling and didn't raise questions about her honesty

5. Summary Suspensions: (None)

6. Other Business/General Discussion/Comments from the Public:

Chair Ellis called for public comments.

Representative Serben advised that he will be unable to attend the October meeting next month and he briefly addressed the anticipated petition from the charitable nonprofit organizations relating to a potential moratorium regarding the cash flow requirements. He emphasized that as the Commission looks at the cash flow situations the nonprofits continue to suffer through, the Commission should also consider that they are still able to contribute to the community which has a positive impact. He asked the Commission to review very carefully the things that have gone on and to consider the impacts to the charitable non-profits in response to the expansion of gambling in other areas and the smoking ban, and to look favorably upon the charitable non-profit request when it is received. **Chair Ellis** appreciated Representative Serben's concerns about the industry and the effect of Initiative 901; he affirmed there will be continued opportunities for public testimony and written comments as the petition proceeds through the process.

At 5:00 p.m., **Chair Ellis** called for a thirty minute executive session to discuss pending investigations, tribal negotiations, and litigation. He recalled the meeting at 5:45 p.m., and immediately adjourned the meeting.

Minutes submitted by,

Shirley Corbett
Executive Assistant

**COMMISSION MEETING
FRIDAY, SEPTEMBER 15, 2006
DRAFT MINUTES**

Chair Ellis called the meeting to order at 9:30 a.m., at the Red Lion Hotel in Spokane. He introduced the following members and staff:

MEMBERS PRESENT: **COMMISSIONER JOHN ELLIS, Chair**, Seattle
 COMMISSIONER JANICE NIEMI, Vice Chair, Seattle
 COMMISSIONER ALAN PARKER, Olympia
 COMMISSIONER KEVEN ROJECKI, Tacoma
 SENATOR JEROME DELVIN, Richland
 REPRESENTATIVE ALEX WOOD, Spokane
 REPRESENTATIVE JOHN SERBEN, Spokane

STAFF PRESENT: **RICK DAY**, Director
 SHARON REESE, Deputy Director
 JEANNETTE SUGAI, Acting Ast. Director–Field Operations
 DAVE TRUJILLO, Assistant Director – Licensing Operations
 AMY HUNTER, Administrator – Communications & Legal
 JERRY ACKERMAN, Assistant Attorney General
 SHIRLEY CORBETT, Executive Assistant

7. Approval of Minutes:

Commissioner Niemi made a motion seconded by Commissioner Parker to approve the minutes of the regular meeting of August 10-11, 2006 as presented.

8. Petition for Rule Change-ZDI Gaming, Inc., Cash Cards:

WAC 230-12-050 and WAC 230-30-070:

Chair Ellis reported that Attorney Joan Mell on behalf of ZDI withdrew their petition for the proposed rule change.

9. Petition for Rule Change – Don Logerwell:

WAC 230-02-412:

Ms. Hunter advised WAC 230-02-412 is up for final action, it was filed at the June meeting. This issue relates to what happens to logo chips when a business closes or chooses to change its logo. Chips are currently defined as gambling equipment. The petitioner, Mr. Logerwell has proposed that they not be defined as gambling

equipment—he wants the business to be able to sell them to collectors or to anyone who may be interested in having a few gambling chips. His letters refer to a prior proposal by staff and he noted that his proposed language is what the rules team was looking at proposing at one time. **Ms. Hunter** noted that when the Rules Team examines a rule proposal with staff and when a rule is proposed for Commission consideration, they are two different things. Ultimately, staff had concerns regarding the proposal and wanted additional evaluations. In the end, staff decided they weren't comfortable with deregulating this area. Ms. Hunter reported that Mr. Logerwell has been very cooperative and patient as staff considered the pros and cons of no longer defining chips as gambling equipment.

Staff checked the regulations for Nevada and New Jersey and found they are very restrictive. New Jersey requires destruction; it has to be in front of two card room employees. In Nevada the destruction must be facilitated by shredding. Mr. Logerwell expressed concerns about who staff had contacted in Nevada because he was also working with Nevada in an attempt to allow for some of their chips to be sold when they have been discontinued. Staff again contacted Nevada in response to Mr. Logerwell's indication that the regulations allow the Chairman of the Nevada Gaming Control to approve or require other methods for the disposition of discontinued chips and tokens. Staff determined Nevada doesn't allow other methods of destruction. The Nevada Gaming Control Board denied Mr. Logerwell's request to buy chips from a casino in a July 11 letter. They said selling chips is not a method of destruction approved by the Gaming Control Board ... and, the Board is concerned about the chip's use as currency.

Ms. Hunter explained why this proposal should not be adopted. She noted that gambling is to be closely controlled, which also means the equipment that is related to gambling should be closely controlled. Gambling chips are defined as equipment and the Commission has regulated them since about 1975. Ms. Hunter explained chips are currency and because of that staff felt they need to be controlled. If they aren't controlled there is a potential for fraud, theft, and counterfeiting. She demonstrated the similarity between some sample chips and noted that some businesses have actually accepted chips from other properties. The sample chips were accepted by one of the tribal casinos. They are not the tribal casino's chips—they are from several different locations. She advised that dealers are not necessarily required to spread all the chips and notice minor logo or color differences. They can be mistakenly accepted in a pile, and they have been accepted.

Staff believes the current rule is clear that only licensees (owners or manufacturers and distributors) may possess chips. If staff discovers someone else selling chips, it is clear by rule that activity is not allowed. Under Mr. Logerwell's proposal, staff would have to conduct additional research to determine if the chips were allowed or not. Ms. Hunter reiterated that Nevada and New Jersey are two states that have a lot of gambling and they don't allow chips to be sold—staff believes that is an industry standard; however, she affirmed that staff did not check with every other state.

Staff believes that allowing this petition will create regulatory concerns—and it doesn't make a lot of sense to do this for a very limited group of people. The petition has generated four letters in support of the petition and seven letters and one e-mail from people against the petition (chip collectors), which were included in the agenda packet. The chip collectors feel that if more chips are suddenly entered into the market, the value of their collections will go down. Staff recommended the petition be denied.

Donald Logerwell appeared in support of his petition. He noted the current rule defines gambling equipment as any device or supplies to conduct card games, etc., including gaming chips and cards. WAC 230-12-335 states that gambling equipment possessed by an unauthorized person is subject to seizure and forfeiture. He noted that from the perspective of chips from licensed facilities that expire or are surrendered—those chips may only be sold to other licensees or manufacturers. He thought it should be obvious that no one else would want them. Diamond Lil's wouldn't want Freddy's chips because they don't say Diamond Lil's. Likewise, the manufacturers don't want them back because they are useless to them as well. Under the current rules obsolete chips can't go anywhere—they can't be sold and they can't be transferred to anyone else.

Mr. Logerwell explained his amendment would provide an exception from the definition for discontinued chips or for chips which were for a facility that is no longer open. He affirmed that he has worked with the staff for a year and was surprised that staff was opposing the petition. Mr. Logerwell noted the documented history of staff's consideration suggests this was not something that was simply an out of hand dismissal of a serious matter. Staff looked at this issue carefully and he believed their inability to come to a decision much sooner suggested that they were looking for a reason they decidedly wanted to do, but they couldn't figure out how to make it work.

Addressing staff's concerns about fraudulent redemption and counterfeiting, **Mr. Logerwell** stated that he has been asking for months if staff had any evidence that any of these things have ever happened. This morning for the first time chips were passed around that were supposedly passed at the Muckleshoot casino. He emphasized that his petition has support from the licensees and the RGA—the people who are at risk if chips are subject to fraudulent redemption. In response to a notion that allowing the chips to be sold would be contrary to an industry standard, Mr. Logerwell advised there is no industry standard. He pointed out that staff has not cited a single rule from any state that requires obsolete chips to be destroyed or forbids their sale.

Mr. Logerwell emphasized the current rule is both unenforced and unenforceable. He believed it was grossly unfair to law abiding licensees and amounts to unnecessary regulation. He noted there are billions of obsolete and fantasy chips on the market today, and if any of these issues were a concern, counterfeiting and fraudulent redemption would be experienced at a grand scale because of the untold

quantity of chips that are available from other locations. He agreed the bottom line seemed to be that the Commission retains regulatory jurisdiction to determine whether individuals are illegally possessing or using gambling equipment. He questioned how a casino chip that is no longer in use could be illegally possessed or used. He noted that home poker games are not illegal in the state and that chip collecting is not illegal. Fraud is already illegal; however, the Commission doesn't have to have a rule that precludes fraud.

Mr. Logerwell countered staff's statements regarding an industry standard and the destruction rules/requirements in Nevada and New Jersey. He advised that one of his frustrations has been that he couldn't follow up on the things that the staff provides because he doesn't know the sources of their information. **Chair Ellis** acknowledged that Mr. Logerwell has had a long interchange with staff over these matters; he suggested the evidence that would be most persuasive to the Commission should relate to the merits of the issue as opposed to who said what and when. He referenced the letter addressed to Mr. Logerwell from the Nevada Gaming Control Board which states that selling chips is not a method of destruction approved by the Gaming Board. Chair Ellis commented that it seems to be quite clear that they rejected Mr. Logerwell's attempt to purchase chips and said it was not permissible in Nevada. Mr. Logerwell affirmed the current Chairman of the Nevada Gaming Control Board rejected his initial request; however, those discussions are ongoing. He emphasized the rule in Nevada says that other dispositions may be appropriate if the Chairman approves such disposition. Nevada's biggest concern is with fraud and the ability for counterfeit chips to be copied from existing chips. Mr. Logerwell demonstrated various recent postings on E-bay relating to chips for sale from the Dunes Hotel and Casino which closed in 1993—he advised that he didn't know if Nevada approved the selling of the Dunes chips; however, he noted there are lots of chips available for sale, including these from an obsolete Nevada casino.

Mr. Logerwell addressed the significance of walk-out chips, the chips that walk out the door in the pockets of players. He directed attention to an e-mail chat board where one member asked the manager of a poker room at the Palms Hotel, how many chips they ordered. His response was that at the last count over a year ago, over 120,000 in \$1.00 chips had walked out the door of the Palms Casino since they opened. Mr. Logerwell believed that was enough to stop three or four Washington card rooms. Mr. Logerwell advised that he didn't know what to make of staff's comments that chips are currency or negotiable instruments. He commented that it has been a while since he studied Article 3 of the Uniform Commercial Code; however, he recalled that some of the requirements of negotiability, and he didn't believe chips met any of them.

Mr. Logerwell spoke to the issue of fraudulent redemption and counterfeiting and he demonstrated various kinds of chips to include clay chips with inlay inserts that defines the house and dollar value, he drew attention to two-part plastic chips, and the latest version of chips which are a ceramic chip printed on a white disk. Chipco, the manufacturer, makes it clear that they can't be counterfeited. Mr. Logerwell

explained that fantasy and home game chips are the same sorts of chips that exist in card rooms and casinos throughout the country. He suggested they dwarf the number of chips that are sold and could be available from obsolete card rooms. He demonstrated three stacks of chips, noting the top chips were fantasy chips, the middle chips were fantasy chips made by a different company, and the bottom chips were Washington chips—all of the chips are on the market today, and they are indistinguishable in the sense of size, shape, and weight. Mr. Logerwell suggested that if having the bottom set on the market created some risk of redemption or counterfeiting, it was miniscule in comparison to the chips that already exist on the market.

Mr. Logerwell reiterated the current rule is not enforced. He noted that over the last few years there has been at least 50 Washington card rooms that have closed and have sold their chips in large quantities to non-licensees—places such as Blues at the Bend, Vitto's, Ruby's, Marilyn's on Monroe, and Lucky Ticket. The chips are already on the market and no effort has been made to stop those sales. Mr. Logerwell didn't believe the Commission would want to dedicate staff to go through E-bay site listings every day to see if something from Washington was being sold. He again stressed the rule cannot be enforced.

Chair Ellis called for any other members of the audience that would care to address the proposed rule change. **Commissioner Niemi** addressed the stakeholder comments opposing the petition and pointed out they were all signed with no addresses and they appear to be collectors. Apparently collectors will get more money if a lot of chips are destroyed. She felt the Commission should take that under account in the decision making process. **Commissioner Parker** advised that he operated under the assumption that a party opposing a change to the rule that is opposed by the staff bears the burden of proof of persuading the Commission that staff is incorrect. He commented that based on Mr. Logerwell's presentation, in his opinion, Mr. Logerwell had not met that burden.

Chris Kealy-Iron Horse Casino and Cascade Gaming advised that he has been involved with a lot of surplus chips or closed casinos chips, and what to do with the chips which are recognized as gambling equipment under Washington law. He noted that banks make loans to casinos/enhanced card rooms and restaurants, and they have an asset value. When bankruptcy courts put someone in the trustee process to redeem the highest value out of their left over assets, one of the assets is the chips. However, by law the only people licensees may sell them to are other licensees. Regarding the stacks of chips on demonstration, Mr. Kealy pointed out that two of the sets of chips are legal to sell, trade, and transact in the state; and one of them is illegal. He noted he couldn't tell the difference between any of the chips. He affirmed that people can go to the Bon Marche and buy chips; but, they can't buy the chips used in a closed casino. Mr. Kealy also discounted the idea that somehow the closed casino chips provide a security risk because they will get passed off mistakenly as \$1 chips. He affirmed there are billions of \$1 chips that could be passed off. The only chips one can't get a hold of are from the people doing the process right. In response to the

suggestion that petitioners need to be able to demonstrate Commission staff's position is incorrect when they provide that testimony, he responded that he hasn't seen where Commission staff has proven there is any lack of ability to get chips to do the alleged counterfeit activity or that there is any alleged counterfeit activity going on. He emphasized there is no lack of access to chips.

Gary Murray-Recreational Gaming Association explained the RGA's position has been to support the idea of this petition. The RGA looks forward to working with staff if this rule doesn't pass to get to a rule that does work for everyone involved. He expressed concern relating to the matter that if someone buys a chip at an existing licensed card room and walks out the door, in effect they are in violation of the current WAC rule regarding possession of gaming equipment. Every chip in existence in the state of Washington not on the gaming table, is technically against WAC rule. He believed that rule needed to be fixed as soon as possible versus ignoring a rule that makes possession of the chips illegal.

Monty Harmon-Harmon Consulting advised that he is currently working with a licensee who closed down, and while one of his goals was to realize value out of the business, he reported the whereabouts of the chips is a mystery. He advised that Commission staff have been involved in assisting him to trace the whereabouts of the chips. Mr. Harmon questioned where efforts would end if an unlicensed person was not being cooperative in locating the chips. He noted that if someone has 27,000 chips and they can realize \$1,000 by selling them over the Internet to satisfy a debt or in order to pay other people they owed from operating that business, it wasn't a bad thing

With no further comments **Chair Ellis** closed the public hearing. .

Commissioner Parker made a motion seconded by **Commissioner Rojecki** to deny the petition for the rule change. Commissioner Parker went on to say that he believed the Commission makes a presumption that in an administrative agency, the staff possesses expertise that is a basic operating principal of administrative law. In their expertise, which has been presented in their response to the proposed rule, they have concluded and recommended the Commission deny this petition based on the fact that this regulation is an industry standard. He further advised that he didn't view the comments relating to the fact that one may substitute one kind of chip for another and pass it off in the process of the play, as being the essence of the position. Additionally, the fact that certain licensees might gain benefit if they are able to sell chips that have been discontinued because the licensee is no longer in business also didn't go to the essence of the position. The position is that this is a common sense regulation that is an industry standard and Commissioner Parker advised that he was persuaded that was the reason to deny this petition. *Vote taken; Commissioner Parker voted aye, Commissioner Rojecki, Commissioner Niemi, and Chair Ellis voted nay.*

Commissioner Ellis announced the motion was defeated; he called for an alternative motion and there were none. Chair Ellis affirmed the petition is denied for lack of action by the Commission. **Jerry Ackerman**, Assistant Attorney General affirmed the petition is effectively denied unless some member of the Commission makes a motion that is seconded and approved by a majority to place it back on the agenda for a future Commission Meeting within the six month time period from the time of filing.

10. Rules Simplification Project:

Chapter 230-11 — Raffles:

Beth Heston, Project Manager affirmed that Chapter 11 of the Rules Simplification Project was up for final action. Amendments have been made since the presentation last month as a result of comments provided by Mr. Williams who pointed out some very valid points. Ms. Heston highlighted the changes. A rule was added to WAC 230-11-006 that says an organization cannot require a person to buy a raffle ticket or pay to participate in any gambling activity in order to become a member. Secondly, WAC 230-11-014 reflects the statute language which was copied exactly into the WAC so that it was not revised in any way. Three other amendments deal with 230-11-085. Initially, staff tried to lump together modified and discounted pricing plans, which was a mistake. Staff separated the two forms of pricing plans as 230-11-086 and 230-11-087 so that it spelled out clearly what were modified pricing plans and what were discounted pricing plans, as well other pricing plans. Staff recommended filing Chapter 230-11 as amended.

Chair Ellis called for questions, comments, and public testimony. There were none.

Commissioner Niemi made a motion seconded by **Commissioner Rojecki** to approve the Rules Simplification Project, Chapter 230-11—Raffles as presented by staff (pages 1-15 in the agenda packet), to be effective in January 2008. *Vote taken; the motion passed unanimously.*

11. Rules Simplification Project:

Chapter 230-18 — Promotional Contests of Chance:

Beth Heston, Project Manager advised Chapter 18 was unchanged since last month. The rules are up for discussion only. **Chair Ellis** called for questions, comments or public testimony. There were none, he noted the rules will appear on the October meeting agenda.

12. Rules Simplification Project:

Chapter 230-09 — Fund Raising Events:

Beth Heston, Project Manager advised Chapter 09 was also unchanged since last month. The rules are up for discussion only. **Chair Ellis** called for questions, comments or public testimony. There were none, he noted the rules will appear on the October meeting agenda.

13. Allowing Poker at Fund-Raising Events

WAC 230-25-040, WAC 230-25-045, WAC 230-25-050, and WAC 230-25-325:

Jeanette Sugai, Acting Assistant Director of Field Operations reported the rule proposals for allowing poker at fund raising events were unchanged from the August meeting. The proposal consists of three rule changes and one new rule that would allow poker to be conducted at fund raiser events and limited fund raising events. The rules package was submitted by staff on behalf of the charitable and nonprofit organizations. Current rules do not allow charitable nonprofits to have poker that is open to the general public. Over the past few years, poker has become very popular and staff routinely receives calls from the charitable nonprofits requesting they be allowed to have poker tournaments in order to raise funds for their organization. Staff has no regulatory concerns with allowing poker at fund raising events. Allowing them would be consistent with the recent approval of poker tournaments at recreational gaming events. **Ms. Sugai** reported there have been no statements against the proposed rule. Staff recommended further discussion.

Chair Ellis called for questions, comments or public testimony. There were none, he noted the rules package will appear on the October meeting agenda.

14. Gambling Service Suppliers:

WAC 230-02-205, WAC 230-02-203, WAC 230-02-204, WAC 230-02-210, WAC 230-03-210 (*Rules Simplification Companion*), WAC 230-03-211 (*Rules Simplification Companion*), and WAC 230-03-212:

Dave Trujillo, Assistant Director for Licensing reported that Item 14 (A-F) was presented in August and the package includes a series of rules related to service suppliers. The service supplier rule was cobbled together over the years to capture those service suppliers providing gambling related services that did not fit into the traditional definition of manufacturing, distributor, operator, or card room employee.

Mr. Trujillo began with Item B, WAC 230-02-203, which is a new section relating to defining lending agent, loan servicer or placement agent. This rule was created to answer questions about those providing services related to lending money for gambling operations. This rule makes it clear that licensure is required to provide these services.

Mr. Trujillo reported some grammatical housekeeping changes were made to WAC 230-02-205 after the presentation last month.

The first substantive change to the rule pertains to 1(c) which clarifies that the section refers to financing items supporting gambling operations. Staff is not interested in kitchen equipment, refrigerators, and that type of thing. The change provides clarification.

The second change is 1(d) which now refers to new section WAC 230-02-208. The third change incorporates gambling related software financial arrangements. The

change is necessary because the gambling equipment doesn't refer to gambling related software.

The change in 1(i) incorporates those providers providing the service of performing the testing and the certification of tribal lottery systems.

The change in 2(e) contains all the exclusions—any of the items listed do not require a supplier license. This is a new section and it discusses those providers providing names, images, artwork, associate copyrights, trademarks, or other features that do not affect the results or outcome of the game for use in gambling equipment. **Mr. Trujillo** explained that not having the exclusions has proven problematic because staff simply wanted to focus on the software that affects the outcome of the game. In the past, staff reviewed patents, trademarks, and copyrights of items that didn't affect the outcome of the game. The last change, 2(f) now refers to the new section of WAC 230-02-204.

Items 14 D, E, and F are companion rules simplification rules and include amendatory section WAC 230-03-210, new section WAC 230-03-211, and new section WAC 230-03-212. **Mr. Trujillo** noted that staff received one letter in support of the proposal, which will be included in the October agenda packet. Staff recommended further discussion.

Chair Ellis called for questions, comments, and public testimony.

Amy Pivetta Hoffman, Policy Analyst for the Washington Indian Gaming Association (WIGA) conveyed WIGA's support for the rules package under consideration. In particular, WIGA supports the amendatory language to WAC 230-02-205. As written, WIGA believed the definition will be a positive step away from the Commission's current and formal policy of requiring licensure of intellectual property providers as gambling service suppliers. Intellectual property as used in this context provides familiar images and entertaining sounds—it has no effect on the outcome of the game.

Ms. Pivetta Hoffman explained the Tribal Lottery System (TLS) is unique to Washington State. The system is the result of a carefully negotiated Appendix X to Tribal - State gaming compacts as authorized under IGRA. The TLS terminals do not utilize random number generators and are therefore different than Las Vegas style machines. Washington's TLS terminals are different from other tribal gaming machines elsewhere in the country for this same reason. She noted that the requirement of licensing intellectual property providers, as gambling service suppliers would discourage TLS manufacturers from doing business in Washington. She commented that to the tribe's best knowledge, no other gaming jurisdictions require intellectual property providers to be licensed. Tribal gaming operations consistently look to manufacturers to produce games with new themes to keep the tribal gaming market fresh and to meet patron demand. Ms. Pivetta Hoffman cautioned that an additional level of licensing for intellectual property providers would have a chilling

effect on the tribal gaming market. She believed the additional time spent and the cost of licensing would only serve to impair the ability of each gaming tribe in Washington State to support their tribal programs such as Head Start, Health Clinics, and Health Care.

Brian Callaghan-Vice President of Bally's Technologies (Washington Operations) advised that for reasons articulated by Mr. Trujillo, Bally's also supports this change, and he advised it will be very helpful. Bally's Technologies is a supplier of gaming devices and lottery systems for the tribal market in Washington. The proposed rule change will afford tribes an opportunity to work with companies for artwork and other things that don't affect the outcome of the games.

Gabriel Galanda-Williams, Kastner & Gibbs present as counsel for Bally Technologies formerly known as Bally Gaming and Systems, spoke in support of the amendments to WAC 230-02-205, particularly the new Subsection E. He affirmed it will exempt intellectual property and its providers from regulation in Washington State. He commented that the proposed rule is a result of excellent government-to-government communication between the Washington Indian Gaming Association and the Washington State Gambling Commission in union with the industry represented by Bally Technologies.

Mr. Galanda noted the Gambling Commission previously followed an informal policy of regulating intellectual property providers. He referenced a July 27, 2004, draft policy previously circulated and cited by Gambling Commission staff in past attempts to regulate intellectual properties which chilled the video lottery terminal market and shrunk the library of titles available for Washington tribal casinos among others. He offered an example related to Konami Gaming. Konami is widely known as a manufacturer of video games; they are headquartered in the Far East and they have a gaming offshoot headquartered in Nevada. At one point, Konami and Bally's entered into a license agreement that would authorize Bally to use Konami images that were very attractive to the casino patrons. In exchange for Bally's use of the images, the copyrights were owned by Konami, a foreign corporation with no other real business or gambling business in Washington. Konami would receive \$1,500 per use for every machine that Bally introduced with the Konami images. It was a flat fee so that they could not exert any influence over the day-to-day operation of the business operations of Bally's. The Gambling Commission contacted Konami and suggested they were interested in investigating them in Nevada and in the Far East. Konami responded by saying for \$1,500 per machine, "thanks but no thanks—we simply have other things to do and it's not worth our time, effort, and expense to come to Washington for \$1,500 a machine." As a result, there are no Konami titles in Washington.

Mr. Galanda commended the proposed rule, affirming it is excellent policy and sensitive to the market needs of the Indian Country and its partners such as Bally's. It tracks with policy that has been passed throughout the country—states like Nevada, New Jersey, and Mississippi that do not license intellectual properties. He believed

there is not a public policy reason that contravenes a policy such as this—that it will not welcome the criminal element into society, and it will not have an adverse affect on society. Mr. Galanda endorsed the proposed rule package for adoption.

Monty Harmon, Harmon Consulting, speaking on behalf of the Recreational Gaming Association addressed Item 1 regarding the language to restrict licensure to those that provide financing for facilities equipment or operational needs. He expressed concern with the licensing of financiers—noting that once a second location/loan is provided, the licensee should become a licensed service supplier. He explained that if equipment is provided for a restaurant (such as an HVAC ventilation system for a business), that company, if they work with more than one licensee could become required to get a license under the rules the way they are written. He indicated his desire to work with staff to consider alternative wording to section 02-205—to provide a simple adjustment to section 1(c). The section would read “providing financing for purchases or leases of gambling equipment or for providing financing for infrastructure or facilities or equipment”—he recommended striking the words “that supports gambling” and inserting “directly related to establishing or sustaining gambling operations for more than one licensee.” This wording would help focus the rule on financiers for the gambling area. He affirmed it was not his desire to take the focus off those who have influence over the business. **Chair Ellis** encouraged Mr. Harmon to collaborate with Mr. Trujillo concerning the proposed language.

Jerry Ackerman-Assistant Attorney General inquired if Mr. Harmon could provide an example of a restaurant equipment supplier that has been required by the Commission to be licensed. **Mr. Harmon** addressed an instance when two Denny’s Restaurants had a common owner and they had a pull-tab license. GE Capital came in to finance the purchase of those Denny’s Restaurants, and fell into the requirements to become licensed. They ultimately decided to refinance in another direction.

Gabriel Galanda reported that he neglected to forward the letter Mr. Trujillo alluded to as transmitted by mail earlier to the Commission this week. He advised for the record, that it was a September 12, 2006 letter formally commenting and supporting the rule changes to WAC 230-02-205 Subsection E. He distributed copies to the commissioners.

Director Day advised that as staff moved forward with the discussion on service suppliers and the concept of financing as it relates to gambling equipment, he anticipated that staff would be somewhat cautious because of the potential methods of individuals the Commission wouldn’t want involved or in control of gambling to come in through avenues other than the direct gambling business itself. He noted that some jurisdictions like New Jersey go so far as to license housekeepers. Director Day affirmed that staff has tried to find a compromised line where the Commission will maintain enough discretion to choose to investigate a supplier; but, generally try to do that on a risk basis. **Chair Ellis** agreed that was a very useful point to remember.

15. Other Business/General Discussion/Comments from the Public/Adjournment:

Chair Ellis announced the potential for an earlier starting time for the Commission on Friday, October 13, because a very large package of proposed rule changes concerning card rooms will be on the agenda. He encouraged attendees to keep a watchful eye on the agenda and the designated starting time. With no further comments, Chair Ellis adjourned the meeting at 10:55 a.m.

Minutes submitted by,

Shirley Corbett
Executive Assistant